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9 JOSE BONILLA

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13 UNITED STATES OF AMERICA,  
14 Plaintiff,  
15 vs.  
16 JOSE BONILLA,  
17 Defendant.

CASE NO. CR-07-00251 RMW

MOTION OF JOSE BONILLA TO  
WITHDRAW PREVIOUSLY  
ENTERED PLEAS OF GUILTY TO  
THE INDICTMENT

Date: 1/12/09  
Time: 9:00 am  
Hon. Ronald M. Whyte

18 I.

19 INTRODUCITON

20 Through this motion, the Defendant JOSE BONILLA, moves the Court to  
21 withdraw his previously-entered pleas of guilty to both counts of the indictment  
22 in this case, which charge felon in possession of a gun and possession of an  
23 unregistered firearm. The motion itself is grounded upon the basis that the  
24 Defendant, at the time of the entry of his plea, did not understand that such a  
25 plea would subject him to probable deportation. As addressed below, the facts  
26 demonstrate a "fair and just reason" for requesting the withdrawal under Rule  
27 11(D)(2)(b), Federal Rules of Criminal Procedure.

28 ///

## II.

STATEMENT OF RELEVANT PROCEEDINGS IN THIS CASE

On November 5, 2007, JOSE BONILLA appeared before this Court. At that time, he entered a plea of guilty to both counts of the indictment, which charged him with being a felon in possession of a firearm and, also, the possession of an unregistered firearm. Mr. BONILLA pleaded guilty to both charges without entering into a plea bargain agreement with the government.

During the voir dire of Mr. BONILLA at the entry of the plea, no questioning was undertaken concerning the issue of deportation or the fact that Mr. BONILLA was not a citizen. Similarly, neither counsel for Mr. BONILLA, nor Mr. BONILLA, brought these matters to the attention of the Court.

## III.

STATEMENT OF RELEVANT FACTS

Mr. BONILLA was born in Mexico. His parents brought him to the United States in his early youth. He received his first green card in approximately 1988. He has lived in Watsonville, California, as a permanent resident for his entire adult life.

Mr. Bonilla's wife, his 16 year old daughter, and his 9 year old son, are citizens of the United States. They live with him in the family home in Watsonville.

Mr. BONILLA has been employed for most of his adult life. In the year 2000, he began suffering from a panic disorder and a major depressive disorder. Although he continued to work for a period of time, by April of 2006, he was put on disability. He was on disability for those disorders from approximately April 2006 through the year 2007. His employment disability having expired (State disability), he is now unemployed.

At all times since 2007, he has been taking prescription medications, in order to combat his stress and depression. He noted that fact during the voir

1 |dire itself. (Transcript, 11/5/07, p.4, attached as Exhibit "A").

At the time of the entry of the plea, Mr. BONILLA did not realize or understand, nor had he been told, that the entry of the plea in this matter to the offenses with which he was charged, would probably result in his deportation. Following the plea, a discussion was had between his prior counsel, Mr. Bonilla's wife, and Mr. BONILLA, wherein he found that it was very probable that, as a result of his plea on November 5, 2007, he would be deported. Had he been aware of the deportation consequences, he would have been able to request his previous counsel to explore different types of plea bargains or, if necessary, proceed to trial. These would be especially meaningful to Mr. BONILLA, since the alternative that he now faces is not only imprisonment, but the sure separation from his wife and children, who wish to continue to reside in the United States for employment and educational purposes.

At the time of the entry of his plea, Mr. BONILLA'S counsel was apparently unaware of Mr. BONILLA'S immigration status. In that regard, Mrs. Bonilla had questioned previous counsel's private investigator about the deportation consequences some 2-3 days before the entry of the plea. However, the private investigator did not relay this information and her inquiries to Mr. BONILLA'S counsel until after the entry of the plea.

21 Following the entry of the plea, contact was made with an immigration  
22 specialist. It appears that there is a very high likelihood of deportation, under  
23 the plea as now structured, if Mr. BONILLA is convicted — even though he is a  
24 long-time permanent resident, and his wife and children are citizens.

## IV.

## MEMORANDUM OF POINTS AND AUTHORITIES

27 Under Rule 11(D)(2)(b), Federal Rules of Criminal Procedure, a Defendant  
28 who "can show a fair and just reason for requesting the withdrawal" may

1 withdraw a plea of guilty prior to sentencing. In that regard, the predecessor  
2 statute which contained the "fair and just reason" terminology (former Rule  
3 32(e), Federal Rules of Criminal Procedure), provided that a "court may permit  
4 the plea to be withdrawn if the defendant shows any fair and just reason". See,  
5 United States v. Kwan, 407 F.3d 1005, 1017 (9th Cir. 2005). (italics added)

6 In United States v. Kwan, supra, pp.1017-1018, the Court granted the  
7 *writ of coram nobis* based both upon a defense attorney's incorrect advice  
8 regarding immigration consequences, and the failure to pursue a withdrawal of  
9 a plea. There, the Court noted that if the defendant had withdrawn his plea, he  
10 could have gone to trial, re-negotiated his plea agreement to avoid deportation,  
11 pled guilty to a lesser charge, or, for that matter, the parties could have  
12 stipulated that the particular defendant would be sentenced to less than one  
13 year in prison. See, United States v. Kwan, supra, pp. 1017-1018. The Court  
14 then went on to note under Rule 11's predecessor section that "a sentencing  
15 court may exercise its discretion to permit a defendant to withdraw his guilty  
16 plea prior to sentencing if the defendant shows a fair and just reason for  
17 requesting the withdrawal".

18 Other circuits have followed this rule. In United States v. Couto, 311 F.3d  
19 179 (2nd Cir. 2002), the Court vacated a conviction and reversed the District  
20 Court's order refusing to allow the withdrawal of the plea, where the attorney  
21 gave incorrect advice regarding immigration consequences. There, the Court  
22 indicated that the defendant's attorney's affirmative misrepresentation about  
23 the deportation consequences of a guilty plea fell below an objective standard  
24 of reasonableness and the defendant's overriding concern of remaining in the  
25 United States in that Court's opinion rendered the defendant's plea  
26 "involuntary" because of her counsel's ineffective assistance.

27 Finally, in Stubbs v. Thomas, 590 F.Supp. 94, 100 (D.C.N.Y. 1984), the  
28 Court found that the ineffective actions of a court-appointed investigator may

1 constitute ineffective assistance of counsel under the Sixth Amendment. There,  
2 the Court held that an investigator, appointed by the Court to assist an indigent  
3 criminal defendant and his counsel with pretrial investigation, should be held to  
4 the same constitutional standard of care as a court-appointed attorney. The  
5 failure to provide reasonably competent investigative assistance, the Court  
6 noted, could constitute a violation of the defendant's Sixth Amendment right to  
7 effective assistance of counsel. Stubbs v. Thomas, *supra*, p.100.

8 Taken in context, the plea of JOSE BONILLA was neither knowing, nor  
9 voluntary. Since he did not understand the consequences of that plea (insofar  
10 as probable deportation was concerned), he was essentially foreclosed from  
11 exercising a knowing and a voluntary choice. Similarly, because of the same  
12 lack of knowledge, he was deprived of the ability to pursue alterative remedies  
13 (a different charge, an agreed-upon sentence, or a trial).

14 Finally, it does not appear that the government will be prejudiced by the  
15 withdrawal of this plea. Instead, they will be placed in the very same position  
16 they were before the entry of the plea.

17 V.

18 CONCLUSION

19 Based upon the above argument and authority, as well as any further  
20 pleadings or documentation to be filed in this matter, it is respectfully requested  
21 that JOSE BONILLA be allowed to withdraw his two previously-entered pleas of  
22 guilty in this matter and that the matter be set for a status conference so that  
23 it can be either resolved or set for trial.

24 DATED: January 7, 2009

Respectfully submitted,

25 CAREY & CAREY

26  
27 /S/

28 ROBERT E. CAREY, JR. Attorneys for  
Defendant JOSE BONILLA

**Exhibit "A"**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

COPY

UNITED STATES OF AMERICA, ) CR-07-00251 RMW  
)  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
)  
VS. ) NOVEMBER 5, 2007  
)  
JOSE HERNANDEZ BONILLA, ) PAGES 1-12  
)  
DEFENDANT. )

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TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE RONALD M. WHYTE  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE  
BY: THOMAS M. O'CONNELL  
150 ALMADEN BOULEVARD  
SUITE 900  
SAN JOSE, CALIFORNIA 95113

FOR THE DEFENDANT: FEDERAL PUBLIC DEFENDER'S OFFICE  
BY: LARA S. VINNARD  
160 WEST SANTA CLARA STREET  
SUITE 575  
SAN JOSE, CALIFORNIA 95113

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

1 SAN JOSE, CALIFORNIA

NOVEMBER 5, 2007

2 P R O C E E D I N G S

3 (WHEREUPON, COURT CONVENED AND THE  
4 FOLLOWING PROCEEDINGS WERE HELD:)

5 THE CLERK: FIRST MATTER, CR-07-00251,  
6 U.S.A. VERSUS JOSE HERNANDEZ BONILLA, ON FOR  
7 STATUS.

8 MS. VINNARD: GOOD MORNING, YOUR HONOR.  
9 LARA VINNARD FOR MR. BONILLA. HE'S PRESENT OUT OF  
10 CUSTODY.

11 MR. O'CONNELL: GOOD MORNING, JUDGE.  
12 THOMAS O'CONNELL FOR THE GOVERNMENT.

13 THE COURT: GOOD MORNING. WHAT'S THE  
14 STATUS?

15 MS. VINNARD: WE'RE PREPARED TO GO  
16 FORWARD WITH AN OPEN PLEA.

17 THE COURT: OKAY.

18 THE CLERK: RAISE YOUR RIGHT HAND.

19 (JOSE HERNANDEZ BONILLA, DEFENDANT,  
20 SWORN.)

21 THE DEFENDANT: YES.

22 THE CLERK: THANK YOU.

23 THE COURT: ALL RIGHT.

24 MR. BONILLA, IT'S MY UNDERSTANDING THAT  
25 YOU WISH TO ENTER A PLEA IN THIS CASE.



1 IS THAT CORRECT?

2 THE DEFENDANT: THAT'S CORRECT.

3 THE COURT: I'M GOING TO BE ASKING YOU  
4 SOME QUESTIONS THIS MORNING AND ADVISING YOU OF  
5 SOME RIGHTS.

6 IF AT ANY TIME YOU HAVE ANY QUESTIONS,  
7 PLEASE LET ME KNOW BECAUSE I WANT TO MAKE SURE YOU  
8 UNDERSTAND YOUR RIGHTS AND THE EFFECT OF PLEADING  
9 GUILTY.

10 SINCE I HAVE HAD YOU SWORN TO TELL THE  
11 TRUTH, I'M REQUIRED BY LAW TO ADVISE YOU THAT  
12 SHOULD YOU ANSWER ANY OF MY QUESTIONS WITH AN  
13 ANSWER THAT YOU KNOW IS INCORRECT, THAT COULD GET  
14 YOU INTO FURTHER DIFFICULTY WITH THE LAW FOR MAKING  
15 A FALSE STATEMENT TO THE COURT UNDER OATH, AND IF  
16 YOU WERE EVER CHARGED WITH MAKING A FALSE STATEMENT  
17 TO THE COURT UNDER OATH, WHAT YOU SAID HERE TODAY  
18 COULD BE USED AGAINST YOU.

19 DO YOU UNDERSTAND THAT?

20 THE DEFENDANT: YES, I DO.

21 THE COURT: HAVE YOU BEEN PROVIDED WITH  
22 THE -- WITH A COPY OF THE CHARGES BEING BROUGHT  
23 AGAINST YOU?

24 THE DEFENDANT: YES.

25 THE COURT: OKAY. AND ARE YOU CURRENTLY

1       TAKING ANY KIND OF MEDICATION OR DRUG OR ANYTHING  
2       THAT AFFECTS YOUR ABILITY TO THINK CLEARLY AND MAKE  
3       DECISIONS?

4               THE DEFENDANT:   I'M TAKING SOME  
5       PRESCRIBED MEDICATION, BUT I'M --

6               THE COURT:   IT DOESN'T AFFECT YOUR --

7               THE DEFENDANT:   IT DOESN'T AFFECT MY  
8       ABILITY TO ANSWER YOUR QUESTIONS.

9               THE COURT:   OKAY.   AND ARE YOU SATISFIED  
10      WITH YOUR LAWYER?

11              THE DEFENDANT:   YES, I AM.

12              THE COURT:   OKAY.   HAS ANYBODY PROMISED  
13      YOU ANYTHING IN ORDER TO GET YOU TO PLEAD GUILTY?

14              THE DEFENDANT:   NO, SIR.

15              THE COURT:   HAS ANYBODY TRIED TO FORCE  
16      YOU TO PLEAD GUILTY?

17              THE DEFENDANT:   NO, SIR.

18              THE COURT:   NOW, THERE ARE TWO CHARGES  
19      AGAINST YOU.

20              THE FIRST CHARGE IS THAT ON OR ABOUT  
21      JULY 29TH, 2006, AS OF THAT DATE, YOU'D BEEN  
22      PREVIOUSLY CONVICTED OF A CRIME THAT CARRIED A TERM  
23      OF IMPRISONMENT EXCEEDING ONE YEAR; THAT ON  
24      JULY 29TH, 2006, YOU KNOWINGLY POSSESSED A FIREARM;  
25      AND THAT THAT FIREARM HAD TRAVELED IN INTERSTATE

1 COMMERCE.

2 THE MAXIMUM PUNISHMENT FOR THAT OFFENSE  
3 IS TEN YEARS OF IMPRISONMENT; A \$250,000 FINE; A  
4 THREE YEAR PERIOD OF SUPERVISED RELEASE; AND A \$100  
5 MANDATORY SPECIAL ASSESSMENT.

6 THE SECOND CHARGE AGAINST YOU IS FOR  
7 POSSESSION OF AN UNREGISTERED FIREARM.

8 THAT CHARGE BASICALLY SAYS THAT ON  
9 JULY 29TH, 2006, YOU POSSESSED A FIREARM AND THAT  
10 THE FIREARM WAS NOT REGISTERED IN THE NATIONAL  
11 FIREARMS REGISTRATION AND TRANSFER RECORD.

12 THE MAXIMUM PUNISHMENT FOR THAT OFFENSE  
13 IS ALSO TEN YEARS OF IMPRISONMENT; A \$250,000 FINE,  
14 A THREE YEAR PERIOD OF SUPERVISED RELEASE; AND A  
15 \$100 SPECIAL ASSESSMENT.

16 SUPERVISED RELEASE IS A PERIOD OF TIME  
17 AFTER SOMEONE'S RELEASED FROM ANY CUSTODY SENTENCE  
18 IN WHICH HIS ACTIVITIES ARE RESTRICTED, AND SHOULD  
19 HE VIOLATE ONE OF THOSE RESTRICTIONS, HE CAN BE  
20 PLACED BACK INTO CUSTODY IMMEDIATELY.

21 THE COMPLAINT -- OR, RATHER, THE  
22 INDICTMENT ALSO SEEKS TO HAVE YOU FORFEIT TO THE  
23 GOVERNMENT THE FIREARM REFERENCED IN THE  
24 INDICTMENT.

25 NOW, DO YOU FEEL YOU UNDERSTAND WHAT THE

1 GOVERNMENT WOULD HAVE TO PROVE AND THE PUNISHMENTS  
2 FOR EACH OF THOSE OFFENSES?

3 THE DEFENDANT: YES.

4 THE COURT: ALL RIGHT. NOW, YOU HAVE  
5 CERTAIN RIGHTS.

6 YOU HAVE THE RIGHT TO PLEAD NOT GUILTY,  
7 TO CONTINUE IN THAT PLEA, AND TO HAVE THIS CASE GO  
8 TO TRIAL.

9 IF THE CASE GOES TO TRIAL, YOU'D HAVE A  
10 RIGHT TO BE REPRESENTED BY COUNSEL. IF YOU  
11 COULDN'T AFFORD COUNSEL, COUNSEL COULD BE PROVIDED  
12 FOR YOU AT NO COST.

13 YOU'D BE PRESUMED TO BE INNOCENT AND  
14 COULD NOT BE FOUND GUILTY UNLESS AND UNTIL THE  
15 GOVERNMENT PROVED YOUR GUILT BEYOND A REASONABLE  
16 DOUBT.

17 YOU'D HAVE A RIGHT TO FACE, QUESTION,  
18 CROSS-EXAMINE ANY EVIDENCE OR WITNESSES CALLED BY  
19 THE GOVERNMENT.

20 YOU'D HAVE A RIGHT TO PRESENT EVIDENCE  
21 AND WITNESSES ON YOUR OWN BEHALF.

22 YOU COULD TESTIFY YOURSELF IF YOU WISHED.

23 ON THE OTHER HAND, IF YOU WANTED TO  
24 REMAIN SILENT, YOU COULD DO SO AND YOUR SILENCE  
25 COULD NOT BE HELD AGAINST YOU OR COMMENTED ON BY

1 THE GOVERNMENT.

2 YOU'D ALSO HAVE THE RIGHT TO HAVE THE  
3 COURT ORDER WITNESSES TO APPEAR IF YOU MADE THAT  
4 REQUEST.

5 IF YOU PLEAD GUILTY, THERE WILL BE NO  
6 TRIAL AND YOU'LL BE FOUND GUILTY BASED UPON WHAT  
7 I'M TOLD THIS MORNING.

8 NOW, DO YOU FEEL YOU UNDERSTAND YOUR  
9 RIGHTS?

10 THE DEFENDANT: YES, YOUR HONOR.

11 THE COURT: OKAY. WOULD THE GOVERNMENT  
12 OUTLINE THE EVIDENCE IT HAS, PLEASE?

13 MR. O'CONNELL: YES, SIR.

14 YOUR HONOR, IF THIS CASE WERE TO PROCEED  
15 TO TRIAL, THE GOVERNMENT WOULD PROVE BEYOND A  
16 REASONABLE DOUBT THAT ON OR ABOUT JULY 29TH, 2006,  
17 POLICE IN WATSONVILLE, CALIFORNIA, RESPONDING TO A  
18 GANG ALTERCATION.

19 THEY NOTICED A GMC YUKON VEHICLE WITH AN  
20 OPEN WINDOW WITH A SAWED-OFF SHOTGUN LYING ON THE  
21 FRONT SEAT OF THAT VEHICLE.

22 AFTER SECURING THE SAWED-OFF SHOTGUN,  
23 THEY ASCERTAINED THAT THE VEHICLE BELONGED TO THE  
24 DEFENDANT, MR. BONILLA.

25 THE SHOTGUN WAS SUBMITTED TO THE

1       LABORATORY. MR. BONILLA'S FINGERPRINTS WERE  
2       RECOVERED, OR AT LEAST ONE LATENT FINGERPRINT WAS  
3       RECOVERED WHICH MATCHED MR. BONILLA.

4               THE SHOTGUN HAD AN OVERALL LENGTH OF 24  
5       INCHES AND A BARREL LENGTH OF 13 INCHES, WHICH WERE  
6       BOTH BELOW THE STATUTORY REQUIREMENT OF AN 18-INCH  
7       BARREL AND AN OVERALL LENGTH OF 26 INCHES.

8               THE SHOTGUN WAS NOT REGISTERED IN THE  
9       NATIONAL FIREARMS REGISTRATION TRANSFER RECORD.

10              AND THE DEFENDANT HAD SUFFERED ONE PRIOR  
11       FELONY CONVICTION; THAT IS, A CRIME PUNISHABLE BY  
12       AT LEAST ONE YEAR IN PRISON.

13              THE COURT: ALL RIGHT. MR. BONILLA, AS  
14       OF JULY 29TH, 2006, DID YOU HAVE A FELONY  
15       CONVICTION? IN OTHER WORDS, A CONVICTION FOR AN  
16       OFFENSE THAT CARRIED A PUNISHMENT OF MORE THAN A  
17       YEAR?

18              THE DEFENDANT: YES, YOUR HONOR.

19              THE COURT: OKAY. AND ON JULY 29TH,  
20       2006, DID YOU POSSESS A SAWED-OFF REMINGTON 12  
21       GAUGE SHOTGUN?

22              THE DEFENDANT: YEAH. YES, YOUR HONOR.

23              THE COURT: OKAY. YOU KNEW YOU HAD IT;  
24       RIGHT?

25              THE DEFENDANT: YEAH.

1 THE COURT: OKAY. AND DO YOU AGREE THAT  
2 THE WEAPON TRANSFERRED AT SOME POINT IN ITS  
3 LIFETIME FROM ONE STATE TO ANOTHER?

4 THE DEFENDANT: I DIDN'T --

5 MS. VINNARD: MAY THE COURT PHRASE THE  
6 QUESTION AS WE AGREED THE GOVERNMENT WOULD PROVE?

7 THE COURT: YEAH. DO YOU HAVE ANY -- DO  
8 YOU DISPUTE THAT THE GUN IN ANY -- LET ME START  
9 THAT AGAIN.

10 THE GOVERNMENT HAS TO PROVE THAT THE  
11 SHOTGUN TRAVELED FROM ONE STATE TO ANOTHER AT SOME  
12 POINT IN TIME BEFORE YOU WERE FOUND WITH IT.

13 DO YOU DISPUTE THAT THE GOVERNMENT COULD  
14 PROVE THAT BEYOND A REASONABLE DOUBT?

15 (DISCUSSION OFF THE RECORD BETWEEN  
16 MS. VINNARD AND THE DEFENDANT.

17 THE DEFENDANT: NO, YOUR HONOR.

18 THE COURT: OKAY.

19 MR. O'CONNELL: YOUR HONOR, FOR THE  
20 RECORD, THE WEAPON -- I NEGLECTED TO MENTION  
21 THIS -- WAS, IN FACT, MANUFACTURED IN NEW YORK, SO  
22 IT HAD TO HAVE TRAVELED IN INTERSTATE COMMERCE.

23 THE COURT: OKAY. AND WITH RESPECT TO  
24 THE SECOND OFFENSE, WAS THE GUN REGISTERED TO YOU  
25 UNDER -- IN THE NATIONAL FIREARM REGISTRATION AND

1       TRANSFER RECORD?

2               THE DEFENDANT:  IF IT WAS REGISTERED TO  
3       ME?

4               THE COURT:  YES.

5               THE DEFENDANT:  NO.

6               THE COURT:  OKAY.  AND DID YOU KNOW THAT  
7       IT WAS NOT REGISTERED TO YOU?

8               (DISCUSSION OFF THE RECORD BETWEEN  
9       MS. VINNARD AND THE DEFENDANT.)

10              THE DEFENDANT:  YES, YOUR HONOR.

11              THE COURT:  OKAY.  AND, AGAIN, YOU KNEW  
12      YOU HAD THE WEAPON; CORRECT?

13              THE DEFENDANT:  YES, YOUR HONOR.

14              THE COURT:  OKAY.  AND DO YOU UNDERSTAND  
15      AND -- WELL, LET ME ASK IT THIS WAY:  ARE YOU  
16      AGREEING THAT THE FIREARM CAN BE FORFEITED TO THE  
17      GOVERNMENT?

18              THE DEFENDANT:  YES, YOUR HONOR.

19              THE COURT:  OKAY.  ALL RIGHT.  IS THERE  
20      ANYTHING FURTHER THE GOVERNMENT WOULD LIKE ME TO  
21      ASK?

22              MR. O'CONNELL:  YES, JUDGE.  JUST THAT  
23      THE DEFENDANT ACKNOWLEDGES THAT HE KNEW THE NATURE  
24      OF THE FIREARM; THAT IS, THAT IT HAD BEEN MODIFIED  
25      SUCH THAT THE OVERALL LENGTH WAS LESS THAN 26



1 INCHES AND/OR THE BARREL LENGTH WAS LESS THAN 18  
2 INCHES.

3 THE COURT: OKAY. DO YOU AGREE WITH THAT  
4 STATEMENT?

5 THE DEFENDANT: YES, YOUR HONOR.

6 THE COURT: OKAY. ANYTHING ELSE?

7 MR. O'CONNELL: NO, SIR.

8 THE COURT: ALL RIGHT.

9 IS THERE ANYTHING FURTHER YOU'D LIKE ME  
10 TO ASK OR TALK TO YOUR CLIENT ABOUT BEFORE I ASK  
11 HIM HOW HE PLEADS, MS. VINNARD?

12 MS. VINNARD: NO, YOUR HONOR.

13 THE COURT: MR. BONILLA, DO YOU HAVE ANY  
14 QUESTIONS BEFORE I ASK YOU HOW YOU PLEAD?

15 THE DEFENDANT: NO, YOUR HONOR.

16 THE COURT: ALL RIGHT. AT THIS TIME,  
17 THEN, I'D ASK YOU HOW YOU PLEAD TO COUNT ONE, WHICH  
18 IS A FELON IN POSSESSION OF A FIREARM, GUILTY OR  
19 NOT GUILTY?

20 THE DEFENDANT: GUILTY.

21 THE COURT: AND AS TO COUNT TWO, WHICH IS  
22 POSSESSION OF AN UNREGISTERED FIREARM, GUILTY OR  
23 NOT GUILTY?

24 THE DEFENDANT: GUILTY.

25 THE COURT: AND I THINK WE'VE COVERED

1 THIS, BUT YOU AGREE THAT THE GUN MAY BE FORFEITED  
2 TO THE GOVERNMENT? YOU AGREE THAT THE  
3 GOVERNMENT -- THAT THE FIREARM MAY BE FORFEITED TO  
4 THE GOVERNMENT?

5 THE DEFENDANT: YES, YOUR HONOR.

6 THE COURT: OKAY. ALL RIGHT. THE COURT  
7 FINDS THAT MR. BONILLA IS MAKING A KNOWING AND  
8 VOLUNTARY PLEA THAT'S SUPPORTED BY AN INDEPENDENT  
9 BASIS IN FACT AND THE COURT FINDS HIM GUILTY AT  
10 THIS TIME.

11 SENTENCING DATE?

12 THE CLERK: MARCH 10TH, '08.

13 MS. VINNARD: THAT'S ACCEPTABLE TO THE  
14 DEFENSE, YOUR HONOR.

15 MR. O'CONNELL: THAT'S FINE, JUDGE.

16 THE COURT: OKAY. THANK YOU.

17 MR. O'CONNELL: THANK YOU.

18 MS. VINNARD: THANK YOU.

19 (WHEREUPON, THE PROCEEDINGS IN THIS  
20 MATTER WERE CONCLUDED.)

21

22

23


24

25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT  
REPORTER OF THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH  
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,  
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND  
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS  
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS  
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED  
TRANSCRIPTION TO THE BEST OF MY ABILITY.

  
LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595